

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

OCT 31 2008

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

ROBERT SANCHEZ ESCOBEDO,

Appellant.

2 CA-CR 2007-0311

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of  
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20060521

Honorable Gus Aragon, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General  
By Kent E. Cattani and Diane Leigh Hunt

Tucson  
Attorneys for Appellee

R. Lamar Couser

Tucson  
Attorney for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 Following a jury trial, appellant Robert Escobedo was convicted of possession of marijuana and possession of drug paraphernalia and sentenced to aggravated, concurrent prison terms of 1.5 years on each count. On appeal, he argues the trial court erred in denying his motion to suppress evidence obtained in violation of his Fourth Amendment rights. Although the legal conclusions underlying the trial court's ruling were erroneous, we nevertheless find the court properly denied Escobedo's motion to suppress, and we therefore affirm his convictions and sentences imposed.

¶2 In reviewing a trial court's ruling on a motion to suppress, we consider only the evidence presented at the suppression hearing, which we view in the light most favorable to sustaining the ruling. *State v. Gay*, 214 Ariz. 214, ¶ 4, 150 P.3d 787, 790 (App. 2007). We review the trial court's factual findings for an abuse of discretion; any legal issues are reviewed de novo. *Id.* And, we must uphold the trial court's ruling if it is ultimately correct, even if for the wrong reason. *See State v. Acosta*, 166 Ariz. 254, 259, 801 P.2d 489, 494 (App. 1990).

¶3 At the suppression hearing, Escobedo stipulated that an officer of the Tucson Police Department lawfully stopped the vehicle Escobedo was driving. While talking to Escobedo and standing near the car, the officer smelled the odor of unburnt marijuana coming from the vehicle's interior. When a second officer arrived to provide assistance, he, too, smelled marijuana emanating from inside the vehicle. A records check revealed an outstanding warrant for Escobedo's arrest for domestic violence. Escobedo called the owner

of the vehicle from his cell phone and told her he was going to be arrested and she should come pick up her car. The police then arrested Escobedo, placed him in handcuffs, and seated him in the back of a patrol car. They subsequently searched the vehicle Escobedo had been driving, finding marijuana in a black bag in the back seat.

¶4 The state argued below that the warrantless search of Escobedo's vehicle was valid either as a search incident to arrest or because the officers had probable cause to believe it contained marijuana. The trial court apparently found that probable cause would not support a warrantless search of the vehicle. However, the court ultimately ruled that the search was a valid search incident to arrest. Although we accept the trial court's factual findings, we conclude that its legal conclusions were incorrect.

¶5 The facts in this case, to the extent relevant to the constitutionality of the search incident to arrest, are indistinguishable from the facts in *State v. Gant*, 216 Ariz. 1, ¶¶ 2-4, 162 P.3d 640, 641 (2007), *cert. granted*, \_\_\_ U.S. \_\_\_, 128 S. Ct. 1443 (2008). Our supreme court held in *Gant* that police may not conduct a warrantless search of a vehicle incident to arrest when the scene is secure and the person arrested is in handcuffs and seated in the back of a patrol car. *Id.* ¶¶ 1, 25, 162 P.3d at 641, 646. In nonetheless finding a valid search incident to arrest on identical facts, and on the same legal theory expressly rejected by our state's jurisprudence, the trial court here clearly erred.<sup>1</sup>

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<sup>1</sup>Although the Arizona Supreme Court issued its opinion in *Gant* after the trial court had ruled in this case, the trial court acknowledged this court's opinion in *Gant* and apparently chose to disregard it. *See State v. Gant*, 213 Ariz. 446, 143 P.3d 379 (App.

¶6 Nevertheless, we must affirm a trial court’s erroneous ruling if it reached the legally correct result. *State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984). We agree with the state that the warrantless search of Escobedo’s vehicle fell within the automobile exception to the warrant requirement of the Fourth Amendment. *See United States v. Ross*, 456 U.S. 798, 809 (1982). “The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained.” *California v. Acevedo*, 500 U.S. 565, 580 (1991); *see also State v. Walker*, 119 Ariz. 121, 127, 579 P.2d 1091, 1097 (1978). When officers smell the odor of marijuana emanating from a vehicle, they have probable cause to believe it contains marijuana, and they may then search for this drug without a warrant. *See State v. Harrison*, 111 Ariz. 508, 509, 533 P.2d 1143, 1144 (1975) (odor of marijuana gave officer probable cause to open vehicle’s trunk); *State v. Reuben*, 126 Ariz. 108, 108-09, 612 P.2d 1071, 1071-72 (App. 1980) (odor of burnt marijuana gave officer probable cause to search vehicle’s interior); *State v. Raymond*, 21 Ariz. App. 116, 117, 119, 516 P.2d 58, 59, 61 (1973) (odor of burning marijuana gave officer probable cause to search vehicle without

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2006), *vacated*, 216 Ariz. 1, 162 P.3d 640 (2007). The record suggests the trial court instead agreed with the state’s argument that the United States Supreme Court’s decision in *United States v. Belton*, 453 U.S. 454 (1981), controlled here. But in this court’s decision in *Gant*, we addressed whether *Belton* applied and concluded it did not. *Gant*, 213 Ariz. 446, ¶ 15, 143 P.3d at 384. Our conclusion, whether the trial court agreed with it or not, was binding precedent unless and until reversed or vacated by the Arizona Supreme Court. *See Francis v. Ariz. Dep’t of Transp.*, 192 Ariz. 269, ¶¶ 10-11, 963 P.2d 1092, 1094 (App. 1998) (Arizona Court of Appeals opinion binding precedent in Arizona superior court even if review pending before the Arizona Supreme Court).

warrant). Here, the trial court expressly found that the two police officers on the scene had “smelled the odor of unburnt marijuana coming from the vehicle that [Escobedo] had been driving.” The search of the vehicle and the black bag in the back seat were therefore supported by probable cause; no warrant was required.

¶7 Escobedo suggests the warrantless search of the vehicle was nonetheless impermissible because no sufficient “exigency existed” and the officers had ample time to secure a warrant. But, the risk that police may lose possession of an automobile and its contents “is a principal basis for the . . . automobile exception to the warrant requirement.” *Ross*, 456 U.S. at 830. Given that Escobedo had contacted the vehicle’s owner and told her to retrieve it, the police had reason to believe the vehicle might no longer be available for a search at a later time. And, our supreme court has rejected the contention that a search under the automobile exception is only permissible if officers lack the time necessary to secure a warrant. *See State v. Million*, 120 Ariz. 10, 15-16, 583 P.2d 897, 902-03 (1978) (warrantless vehicle search not unreasonable simply because police could have obtained warrant). Here, the search of the car, which the trial court found to have been conducted within twenty minutes of the stop, did not violate the constitution. *See Chambers v. Maroney*, 399 U.S. 42, 50-52 (1970) (fleeting opportunity to search and recover contents of automobile stopped on side of road makes immediate search constitutionally permissible); *Million*, 120 Ariz. at 15-16, 583 P.2d at 902-03 (upholding warrantless search of motor home two hours after police had probable cause to believe it contained marijuana).

¶8 Accordingly, we affirm the trial court’s order denying the motion to suppress evidence obtained from the vehicle, and we affirm Escobedo’s convictions and sentences.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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PHILIP G. ESPINOSA, Judge